

2 UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mg

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6 | In the Matter of:

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8 | RESIDENTIAL CAPITAL, LLC, et al.,

9

10 | Debtors.

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13

14 United States Bankruptcy Court

15 | One Bowling Green

16 New York, New York

17

18 | November 13, 2014

19 | 10:08 AM

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21 | B E F O R E:

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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1
2 ResCap Borrower Claims Trust's Objection to Claim No. 4664 of
3 James C. Jackson [Docket No. 7609]

4
5 ResCap Borrower Claims Trust's Seventy-Fifth Omnibus Objection
6 to Claims (No Liability Borrower Claims) solely as to claims
7 filed by Alan Moss and Michael Boyd [Docket No. 7552]

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11 JESSICA J. ARETT, ESQ.

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13 Samantha Palmer, Party Pro Se (TELEPHONICALLY)

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1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. We're here
3 in Residential Capital, number 12-12020.

4 MS. ARETT: Good morning, Your Honor. Jessica Arett
5 of Morrison & Foerster for the ResCap Borrower Claims Trust.

6 THE COURT: Good morning.

7 MS. ARETT: The first item on the agenda is the
8 Borrower Trust's objection to claim number 4664 filed by James
9 Jackson. This matter is uncontested, as the claimant has not
10 filed or served the Borrower Trust with a response to the
11 objection.

12 As the Court is aware, the Borrower Trust previously
13 objected to Mr. Jackson's claim in April, and after Mr. Jackson
14 did not respond to that objection or attend the hearing the
15 Court entered an order sustaining the objection on May 15,
16 2014. However, after the Court entered that order it came to
17 the attention of the Borrower Trust and the Court that the
18 April objection was served at the address of an attorney who no
19 longer represented Mr. Jackson. As a result, Mr. Jackson did
20 not receive the objection.

21 For that reason the Court entered an order vacating
22 its previous order, and the Borrower Trust filed a new
23 objection to Mr. Jackson's claim. That objection was served on
24 the address that Mr. Jackson provided to KCC, and this is also
25 the address that Mr. Jackson lists in his response to the

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1 Borrower Claims Trust's fiftieth omnibus objection.

2 Proof of service is demonstrated by the affidavit of
3 service that was filed on October 6, 2014, which can be found
4 at docket number 7618.

5 The Borrower Trust's objection to Mr. Jackson's claim
6 is premised on the fact that the assertions made by the
7 claimant in the proof of claim and his response to the fiftieth
8 omnibus objection have no connection to any debtor entity. The
9 claimant's allegations relate only to the condition of the
10 property and his claim that such property should not have been
11 sold to him.

12 Residential Capital, against whom the claim was filed,
13 is not named in the complaint attached to the claim or in Mr.
14 Jackson's response to the fiftieth omnibus objection, and the
15 debtors were neither the seller of Mr. Jackson's real property
16 nor the originator of his loan.

17 New State Mortgage LLC originated the loan to Mr.
18 Jackson on January 10, 2005. Residential Funding Company held
19 the note briefly, from February 25, 2005 until March, 2005, and
20 aside from that short period no other debtor held the loan.

21 In his response to the debtors' requests for more
22 information, the claimant stated that GMAC Mortgage was the
23 lender of his loan, which is not accurate. GMAC Mortgage
24 serviced the loan after servicing was transferred from
25 Homecomings Financial. However, none of the allegations made

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1 by Mr. Jackson relate to the improper servicing of his loan.
2 And for these reasons the Borrower Trust requests that the
3 claim be expunged from the claims register.

4 THE COURT: All right. The Court has reviewed the
5 objection to Mr. Jackson's claim. As you've noted, after the
6 original order sustaining the objection was entered it was
7 vacated to give Mr. Jackson a chance to respond. He didn't.
8 The Court has reviewed the objection. The objection is well
9 taken. The objection is sustained and the claim is expunged.

10 MS. ARETT: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. WISHNEW: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. WISHNEW: Jordan Wishnew, Morrison & Foerster, for
15 the ResCap Borrower Claims Trust. This brings us to the
16 contested claims objections at II of today's agenda, the
17 Borrower Claims Trust's seventy-fifth omnibus objections to
18 claims.

19 This claims objection is filed originally at docket
20 number 7552. The Borrower Trust filed a reply in support of
21 the objection at docket number 7727. There are twenty-nine
22 claims subject to this objection. The Borrower's Trust
23 received thirteen responses. One response has been
24 consensually resolved. One response has been -- by Mr.
25 Dlin -- has been withdrawn. I'm sorry. The objection --

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1 THE COURT: The objection has been withdrawn. Right.

2 MR. WISHNEW: -- to Mr. Dlin's claim has been
3 withdrawn. And three claims are being adjourned at this point
4 in time. Those would include the claims filed by Mr. Alan
5 Moss, Mr. Michael Boyd, and Ms. Rhonda Gosselin. Those will be
6 scheduled at a future hearing date.

7 So there are eight responses going forward today.

8 Before I get to the responses I'll simply say with regards to
9 the balance of the uncontested claims, the reasons set forth
10 for the Borrower Trust's objection are included on Exhibit A to
11 the order, which lays out in detail why the allegations or lack
12 of allegations within the Borrower's proofs of claim are not
13 valid claims against the debtors and why the Borrower's Trust
14 believes such claims should be expunged from the claims
15 register.

16 So with regards to the uncontested claims going
17 forward, the Borrower Trust would request that the Court enter
18 the order as to those matters.

19 THE COURT: All right. With respect to the objection
20 as to which no responses were filed, so that's -- we'll deal
21 with those that are going forward today as to which responses
22 were filed. You've adjourned the hearing with respect to some,
23 withdrawn the objection as to one. As to those as to which
24 it's going forward and remain uncontested, the Court has
25 reviewed the objections, concludes that the objections were

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1 well-taken, the objection is sustained and those claims are
2 expunged.

3 MR. WISHNEW: Thank you very much, Your Honor.

4 Your Honor, I will take the responses in the order
5 with which we've set them forth in our reply.

6 THE COURT: Okay.

7 MR. WISHNEW: So the first one is the claim 1574 filed
8 by Rainer Warner. It is a claim filed as both a partially
9 secured and partially unsecured claim in the approximate amount
10 of 500,000 dollars.

11 THE COURT: Just give me a second, because that isn't
12 the order in which I have them in my memo for --

13 All right. First let me ask is Mr. Warner in court or
14 on the telephone?

15 All right. And my CourtCall list does not show any
16 appearance by or on behalf of Mr. Warner.

17 Go ahead, Mr. Wishnew.

18 MR. WISHNEW: Thank you, Your Honor. Your Honor, this
19 is a claim -- Mr. Warner asserts that the company or the
20 debtors are responsible for improper foreclosure, improper
21 charges from property inspections. With regards to both such
22 allegations, both the objection as well as the reply set forth
23 detailed reasons and loan history between the company and Mr.
24 Warner, describing the various loss mitigation efforts that
25 occurred over a course of years in which loan modifications

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1 were considered. They may have been granted in certain
2 respects, but ultimately did not go through for one of the many
3 reasons which could have been that we did not get signature
4 pages, payments were not made, or forms that were required to
5 assess the loss mitigation option were also not received.

6 Similarly, Mr. Warner makes allegations that we
7 improperly charged him for property valuations which he asserts
8 were never done. Again, in our reply we have detailed the
9 efforts that were made, the fact that the property valuations
10 were done on a regular basis because they expired every four
11 months, and that as part of our obligation as servicer and to
12 monitor the value of the property, that is why the broker price
13 opinions were undertaken.

14 I won't go through our response item by item, but,
15 needless to say, I believe that through the objection as well
16 as through the reply we have addressed Mr. Warner's allegations
17 and claims and that there is a solid basis for finding no
18 liability on the debtors' behalf to Mr. Warner.

19 THE COURT: All right. With respect to the objection
20 to the Warner claim, number 1574, the Court is going to take it
21 under submission and enter a written order or opinion. I would
22 note that the debtors or the Trust previously objected to the
23 Warner claim as part of the fiftieth omnibus objection. That
24 was at ECF 5162. The Court denied the objection to the
25 Warner's claim without prejudice on January 8, 2014.

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1 In the original objection the debtors did not
2 specifically discuss the Warner claim, but instead stated that
3 the Warner claim fell in a category of claims for which the
4 debtors determined that they bear no liability based on a
5 review of their books and records, including payment histories,
6 loan modification documents, foreclosure related documents, and
7 internal servicing notes.

8 In his original response Mr. Warner asserted that
9 ownership of the note was not properly established before
10 foreclosure. In any event, the Court denied the
11 objection -- overruled the objection without prejudice as part
12 of the fiftieth omnibus objection.

13 The objection is now back as part of the seventy-fifth
14 omnibus objection, and Mr. Warner has again filed responses,
15 but the Trust has dealt in considerable detail with the history
16 regarding Mr. Warner's efforts to get a loan modification.

17 Even though Mr. Warner is not appearing today in
18 person or by telephone, I will enter a written order dealing
19 with Mr. Warner's claim.

20 MR. WISHNEW: Thank you very much, Your Honor.

21 The next response that we are addressing is the claim
22 of, I believe, Samantha Palmer, claim 2761. This is a general
23 unsecured claim in the amount 1,012,500 dollars.

24 The allegations against the debtors relates to
25 wrongful foreclosure, that Ms. Palmer alleges the debtors

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1 had --

2 THE COURT: Let me, before you go on --

3 MR. WISHNEW: Sure.

4 THE COURT: Ms. Palmer, you're on the phone or Mr.
5 Palmer?

6 MS. PALMER: I am.

7 THE COURT: Okay. After Mr. Wishnew has argued I'll
8 give you a chance to address the Court. Okay?

9 MS. PALMER: Thank you.

10 THE COURT: All right. Go ahead, Mr. Wishnew.

11 MR. WISHNEW: Thank you, Your Honor. Your Honor, this
12 was a loan that that was originated in March 30, 2007 and then
13 subsequently securitized. Homecomings serviced the loan only
14 briefly, from March 30, 2007 through April 1, 2008, when
15 servicing transferred to Aurora.

16 Subsequent, or in 2011 Ms. Palmer filed litigation
17 against the debtors and other entities. That was originally
18 filed March 2, 2011. There was a first amended complaint
19 August 18, 2011, and a second amended complaint December 17,
20 2011. It is the second amended complaint that is attached to
21 Ms. Palmer's proof of claim.

22 In sum, Your Honor, the Borrower Trust brings this
23 objection because, one, we had no interest in the foreclosure
24 action. At the time -- the loan was current and due for the
25 April 1, 2008 payment when servicing was transferred to Aurora.

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1 And, as a result, or in addition, any fraud or servicing
2 related claims against the debtors are similarly time barred.

3 This was a litigation against the company to which a
4 demurrer was filed.

5 THE COURT: Demur.

6 MR. WISHNEW: I'm sorry. Demur. Thank you.

7 THE COURT: I used to practice in California.

8 MR. WISHNEW: And the matter was taken up on appeal on
9 April 12, 2012. I believe opening briefs were filed by both
10 parties, but it has otherwise been stayed and not proceeded.
11 Really, for the same reasons that we were able to obtain the
12 demurrer.

13 THE COURT: Demur.

14 MR. WISHNEW: I'll get it at some point today. Or the
15 next hearing.

16 THE COURT: It's okay, as long as you're not arguing
17 in California.

18 MR. WISHNEW: There you go, Your Honor. I'll stick to
19 New York.

20 And in sum, Your Honor, we believe that there is no
21 valid basis for liability against the debtors, especially given
22 the limited time frame, so long ago, when we were involved with
23 this loan.

24 THE COURT: Do you want to address the statute of
25 limitations issue?

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1 MR. WISHNEW: The statute of limitations issue, Your
2 Honor, with regards to -- there are allegations of fraud,
3 violation of TILA, and forgery. The fraud claim, to the extent
4 there was fraud there's only a three-year statute of
5 limitations, and that would have been from origination. The
6 loan was originated in March, 2007, so any claim would have had
7 to have been brought in March or the spring of 2010, but the
8 complaint was not first filed until the spring of 2011.

9 With regards to statute of frauds for a TILA
10 violation, again, it's one year from the violation, and any
11 TILA disclosure issue would have been raised or would have come
12 about at the time of the origination. Again, that would have
13 expired probably in 2008.

14 With regards to the fact of Ms. Palmer believing that
15 she couldn't have discovered this, there's really no evidence
16 in the record suggesting how the company or the debtor somehow
17 impeded her ability to discover or ask for the underlying
18 documents, and so any sort of tolling of the statute of
19 limitations based upon the discovery doctrine we don't believe
20 is applicable.

21 Finally, with regards to forgery, forgery is a three-
22 year statute of limitations. And, again, that would go back to
23 when the loan was originated, and, again, similar to the fraud,
24 that would have expired before the complaint was filed in 2011.

25 So for the reasons set forth in both Exhibit A to the

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1 objection as well as the reply, it is the Borrower's Trust
2 position that the debtors have no liability to Ms. Palmer.

3 THE COURT: All right. Mr. or Mrs. Palmer, do you
4 want to respond?

5 MS. PALMER: Yes.

6 THE COURT: Go ahead.

7 MS. PALMER: Hello. Good morning. My name is Sam
8 Palmer, Your Honor. I disagree, and I'm very, very nervous.
9 I've never done this before, so please bear with me.

10 THE COURT: I absolutely will bear with you. Okay?

11 MS. PALMER: Okay. I totally disagree. In all steps
12 of the way -- I actually notified Aurora at one time. Once
13 they became the alleged servicer I sent in a seventy-seven page
14 document, which was an audit showing TILA violations. And that
15 was in 2009, July of 2009. Of course I knew nothing about law,
16 so I didn't know that I had to file complaints or anything at
17 that time.

18 With respect to my stating that Homecomings is still
19 responsible, I put into my opposition the fact that in 2007 the
20 two computer systems were merged between Homecomings and GMACM,
21 and at that time -- that was in May of '07 -- on September 24th
22 of '07 they were completing the two systems, but at that time
23 in the 10-K and the 8-K that I attached as exhibits it stated
24 that Homecomings would no longer service any or all of the RALI
25 loans at all. And this was not -- I did not determine this

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1 until about four months ago, when I happened to be reading some
2 of the PSA and the 10-Ks that I had.

3 At that time, evidently, it was turned over to GMACM,
4 all of the servicing for every single one of the RALI trusts.
5 My question was well, my goodness, if they ceased from doing
6 any and all servicing in '07, how could they then, in March of
7 '08, to become effective April 1st of '08, give any type of
8 servicing over to Aurora or any other servicer? I mean, to me
9 it's like the patient died in '07 and then came back to life
10 six months later. That's why I put that in my opposition.

11 With respect to time barring, I have been told that I
12 am not time barred, because I put in the delayed discovery
13 rules, and, unfortunately, I mean, I can't help how the time
14 goes by when you're in litigation. Like even in the case now,
15 I have been stayed due to the ResCap bankruptcy in New York,
16 and therefore, although I have those named, I had not named
17 GMACM or Residential Accredit -- plan to, but I've been on
18 hold.

19 That's, sort of, what I have -- I hope I made that
20 clear or understandable.

21 THE COURT: Okay. Anything else you'd like to add?

22 MS. PALMER: I don't know. I'm sorry. I'm so
23 nervous.

24 THE COURT: That's okay. Just relax, okay?

25 All right. Mr. Wishnew, address the issue about the

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1 transfer of servicing of the loan.

2 MR. WISHNEW: Sure, Your Honor. As we've addressed it
3 in paragraph 88 of our reply at docket number 7727, simply the
4 servicing platform of GMAC Mortgage was, essentially, merged
5 into the servicing platform of Homecomings. So the loan stayed
6 with the debtors. And so it's really -- there was no loss of
7 servicing. It was just that there was a -- essentially, a
8 corporate event in which the platform was merged, and so the
9 debtor still held the -- has held the servicing rights to the
10 loan and had the ability to transfer the servicing rights of
11 the loan to Aurora, which is what they did.

12 With regards to the concern about the discovery or
13 delayed discovery by Ms. Palmer, we addressed that point as
14 well, Your Honor, in paragraph 82 of the reply. And a similar
15 argument was raised by another claimant, Tia Smith. And as
16 part of the Court's approval of the debtors' objection on that
17 point in Ms. Smith's claim, the fact of the matter is that
18 there's really no adequate explanation here how Ms. Palmer was
19 prevented from requesting a copy of her loan. She simply could
20 have reached out, and the fact is she didn't. So there was no
21 active prevention of discovery by the debtors of Ms. Palmer
22 here.

23 THE COURT: All right. Ms. Palmer, do you want to
24 respond again?

25 MS. PALMER: Yes.

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1 THE COURT: Go ahead.

2 MS. PALMER: Thank you very much.

3 THE COURT: Okay.

4 MS. PALMER: Yes, I did reach out. I sent in two WRs,
5 which are also attached -- the letters are attached as
6 exhibits. Unfortunately, Aurora did not return to me all
7 documents. I finally received documents that were partially
8 not for me eyes to see in September of 2011, when I, in
9 addition, received an allonge to my promissory note that was
10 dated 2011, selling my loan to Aurora on behalf of an attorney-
11 in-fact, Nancy L. Walker, on behalf of Deutsche bank, which was
12 after the supposed cutoff date within the PSA. And just
13 recently, when I went through bankruptcy, Deutsche Bank popped
14 up again and turned around and bought the loan again, which I
15 find very, very, you know, unusual.

16 With respect to -- so I have on all of my documents,
17 whenever I found out about something I would address it, and I
18 would try to, you know, adequately figure out what in the world
19 was going on. I made forbearance payments to attempt to get a
20 loan modification for over eighteen months, and I had adequate
21 funds in order to modify the loan. And after they took 112,000
22 dollars from me they just said well, you know, you're not
23 entitled to a loan mod.

24 I mean, so I have really tried to address all issues,
25 all statutes with my, you know, pro per lack of having gone to

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1 law school, ability.

2 THE COURT: May I ask you this, Ms. Palmer? The
3 forbearance agreement and payments, who was servicing the loan
4 at that time?

5 MS. PALMER: Aurora.

6 THE COURT: Okay. Have you brought any action against
7 Aurora?

8 MS. PALMER: Yes.

9 THE COURT: Where is that pending?

10 MS. PALMER: It's on the appellate level. I haven't
11 filed the brief, because we've been on hold. I was only -- the
12 judge, unfortunately, had separated the hearings, and since you
13 practiced, I heard you say, in California, he sustained the
14 demurs initially with Homecomings, even though we had had the
15 Homecomings hearing, and then a week and a half later had the
16 Aurora hearings, Aurora Emergent (sic) quality loan. And
17 unfortunately the Judge decided to wait short one week of three
18 months to sustain those demurs, and by that time the ResCap had
19 been filed and they -- the Severson & Werson and Akerman
20 Senterfitt combined the two cases and everything was put on
21 hold and is still that way pending the bankruptcy in New York.
22 So the other parties were not named.

23 THE COURT: All right. Any --

24 MS. PALMER: Or the brief was not --

25 THE COURT: Anything else you wish to add?

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1 MS. PALMER: -- filed. I'm sorry.

2 THE COURT: Okay. All right. All right. I'm going
3 to take the matter under submission.

4 MR. WISHNEW: Thank you, Your Honor. .

5 THE COURT: Okay. And in due course, Ms. Palmer, I'll
6 be entering a written order or opinion. Okay?

7 MS. PALMER: Okay. Thank you.

8 THE COURT: Thank you very much for participating by
9 phone.

10 MS. PALMER: Thank you.

11 THE COURT: Okay. All right.

12 MR. WISHNEW: Thank you, Your Honor. Next claim is
13 the claim filed by Mr. and Mrs. Barel, claim 4118, a general
14 unsecured claim in the amount of 534,000 dollars.

15 The Borrower Trust's objection to this claim is
16 premised on res judicata, that the claims against the debtors
17 arise --

18 THE COURT: I'm sorry. Which claim is this?

19 MR. WISHNEW: Claim 4118 of Mr. and Mrs. Barel.

20 THE COURT: Okay. Thank you. Yes. Thank you.

21 MR. WISHNEW: I believe Mr. Barel is actually in court
22 today.

23 THE COURT: Okay. Great.

24 MR. WISHNEW: So, Your Honor, the basis for the
25 objection here is that the counterclaims brought by Mr. and

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1 Mrs. Barel in New Jersey litigation -- and these are
2 counterclaims to a foreclosure action in New Jersey -- were
3 decided on the merits in the favor of the debtors.

4 THE COURT: So here's my question. Whether it was
5 correct or incorrect, the case was voluntarily dismissed.
6 Correct?

7 MR. WISHNEW: Yes, but --

8 THE COURT: You have any --

9 MR. WISHNEW: But -- but --

10 THE COURT: Wait. Stop. Do you have any authority
11 that res judicata applies when the plaintiff or the plaintiff's
12 agent voluntarily dismisses the case?

13 MR. WISHNEW: Today I don't have authority, but I
14 would say that there was -- the dismissal was by Greentree. It
15 was not by the --

16 THE COURT: But the case was dismissed. You're asking
17 me to give res judicata effect to a decision on summary
18 judgment that Greentree went ahead and dismissed the case. You
19 don't know why they dismissed it.

20 MR. WISHNEW: I don't know why they dismissed it.

21 They --

22 THE COURT: Okay. They dismissed it.

23 MR. WISHNEW: They dismissed the foreclosure.

24 THE COURT: How do I -- you haven't cited any -- okay.
25 This is the area -- I mean, you haven't provided the Court with

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1 any authority that res judicata can apply to a decision in a
2 case that the plaintiff or the plaintiff's agent voluntarily
3 dismissed. Do you have any authority for that?

4 MR. WISHNEW: No, I don't have authority on that
5 point.

6 THE COURT: Let me hear from Mr. Barel. Come on up.

7 Well, let me just add I don't know of any authority
8 one way or the other, but I'm just --

9 All right.

10 MR. BAREL: Good morning, Your Honor. Ariel Barel.

11 THE COURT: Are you an attorney?

12 MR. BAREL: No, I am not.

13 THE COURT: Okay. You don't need to be.

14 MR. BAREL: Although it was suggested by a few judges
15 that I should become one.

16 THE COURT: Oh, are you litigious?

17 MR. BAREL: Am I what?

18 THE COURT: Never mind.

19 MR. BAREL: No, I'm not religious.

20 THE COURT: I'm teasing. When you say it was
21 suggested by a few judges it just -- it sounds like you've had
22 a lot of court experience.

23 MR. BAREL: I certainly did.

24 THE COURT: But go ahead. And I meant no disrespect
25 by that.

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1 MR. BAREL: I appreciate that.

2 THE COURT: I want to make that clear.

3 MR. BAREL: I appreciate that. It is a very
4 good -- valid point that you bring up.

5 THE COURT: I don't know whether it is or it isn't,
6 because I don't have any cases one way or the other.

7 MR. BAREL: Neither do I, and I couldn't find any,
8 because I was searching. LexisNexis is a very, very vast
9 database with all cases that could come up, but I couldn't find
10 any.

11 However, there's a couple of points that I need to
12 bring up on the issue of dismissal. The order of this
13 voluntary dismissal was issued by GMAC. It was not Ocwen. The
14 order clearly states that. I attached the order to my
15 opposition, and so that's an inaccurate statement made by Mr.
16 Wishnew. Among others. And besides which, I would like to,
17 first of all, enter a running objection to any and all
18 statements made by opposing counsel --

19 THE COURT: No. Just go ahead and make your argument,
20 okay?

21 MR. BAREL: I understand --

22 THE COURT: Let's not --

23 MR. BAREL: But I need to preserve my --

24 THE COURT: No. You --

25 MR. BAREL: -- my rights --

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1 THE COURT: I want to hear your explanation.

2 MR. BAREL: Okay. Well, as I stated, the dismissal
3 was voluntary. There is no -- the claim that was placed in
4 front of this court, the objection, the seventy-fifth omnibus
5 objection, was based on res judicata. And, as the Court
6 stated, there is no authority that neither the Court nor Mr.
7 Wishnew himself could find to substantiate a res judicata based
8 on a dismissed, voluntarily dismissed case, whether it was by
9 their agent, Ocwen, or by GMAC themselves.

10 THE COURT: Well, it was Greentree, not Ocwen.

11 MR. BAREL: Greentree. Whoever that was that Mr.
12 Wishnew stated in his remarks. Greentree. I stand corrected.

13 There are other issues that I submitted in my
14 opposition wherein the claims that we put forth were based on
15 false representations by the debtors in a state court and in
16 this court.

17 I clearly stated where those misrepresentations are.
18 They state in their submission that the loan was sold to Fannie
19 Mae. No evidence of that was provided. Fannie Mae only
20 creates REMICs. Fannie Mae does not buy loans. Fannie Mae
21 sells certificates to investors. GMAC acted as a servicer,
22 which they admitted in this particular filing. However,
23 throughout the litigation in the state court they have insisted
24 that they are the owner of the loan, because they held the note
25 and the mortgage, where we objected to that throughout.

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1 And, by the way, there were four summary judgments
2 filed in total, and the last one was granted. The other three
3 were denied. And the last one was granted by a judge saying I
4 give up. That's it. I've had enough. Those were the actual
5 words that the judge stated.

6 THE COURT: You have a transcript to show me?

7 MR. BAREL: I would provide -- I would present one. I
8 will get it and file it in the record.

9 And the judge also stated that she acted on your order
10 allowing GMAC to continue prosecuting the foreclosure.

11 THE COURT: Well, that's true.

12 MR. BAREL: However, my statement --

13 THE COURT: I -- I -- stop.

14 MR. BAREL: Go ahead. I'm sorry.

15 THE COURT: The supplemental servicing order entered
16 by the Court during the course of the Chapter 11 case
17 authorized the debtors to continue with foreclosure actions,
18 and affirmative defenses could be asserted to it, so the state
19 court judge was absolutely correct to proceed with the
20 foreclosure action.

21 MR. BAREL: But let me ask you this, Judge.

22 THE COURT: Don't ask me. Make your argument.

23 MR. BAREL: If I am not allowed to go after GMAC on my
24 counterclaims because they filed bankruptcy protection, and
25 under automatic stay I'm not allowed to go after them, what

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1 authority do they have to go after me? There is a clear
2 abstention --

3 THE COURT: You were permitted to assert defenses to
4 the foreclosure action. You couldn't seek monetary recovery,
5 but you could have asserted any defenses to foreclosure. The
6 supplemental servicing order specifically permitted that.

7 MR. BAREL: Of course I could.

8 THE COURT: The fact of the matter is, Mr. Barel --

9 MR. BAREL: Yes?

10 THE COURT: -- that you initially were successful.

11 GMAC filed a motion for summary judgment on May 30, 2012.

12 MR. BAREL: That was the last one.

13 THE COURT: No, you objected to that motion, and the
14 Court denied the motion on June 12, 2012 --

15 MR. BAREL: That's correct.

16 THE COURT: -- without prejudice, because GMAC failed
17 to provide the Court with a valid notice of intent to
18 foreclose. And I've been through that issue before in another
19 matter.

20 We permitted GMAC to refile the motion once a new
21 notice of intent to foreclose was filed. You can see the
22 fourth supplemental declaration in Exhibit T. The new notice
23 was served on August 14, 2012, and GMAC filed a second motion
24 for summary judgment on November 8, 2012. You filed an
25 opposition on November 27, 2012, and the Court entered an order

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1 on December 10, 2012 granting the second summary judgment
2 motion.

3 MR. BAREL: It was the fourth one, Your Honor. It was
4 the fourth summary judgment. I can provide that record.

5 THE COURT: But for reasons I don't understand, on May
6 30, 2014 Greentree, acting for GMACM, voluntarily dismissed the
7 case.

8 MR. BAREL: Your Honor, where is the record showing
9 that, that Greentree voluntarily dismissed the case?

10 THE COURT: Well, read --

11 MR. BAREL: The order actually states that --

12 THE COURT: No. Read the Horst supplemental
13 declaration. It's all laid out in there.

14 MR. BAREL: But supplemental declaration --

15 THE COURT: Okay. All right. I've heard enough.

16 MR. BAREL: -- as far as I'm concerned --

17 THE COURT: I've heard enough.

18 MR. BAREL: Well, Your Honor, if I --

19 THE COURT: I've heard enough.

20 MR. BAREL: I appreciate that.

21 THE COURT: Please have a seat.

22 MR. BAREL: Well, if you're not going to allow me
23 to --

24 THE COURT: Please have --

25 MR. BAREL: -- create a record

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1 THE COURT: Could you please have a seat?

2 MR. BAREL: I will have a seat.

3 THE COURT: Mr. Wishnew, the objection to Mr. Barel's
4 claim 4118 on grounds of res judicata is overruled, because
5 GMACM's agent dismissed the action. You got an order for
6 summary judgment. Why they dismissed it, you don't know. I
7 don't know. I take it you didn't even know that they had
8 dismissed it.

9 MR. WISHNEW: Correct, Your Honor.

10 THE COURT: You haven't presented any authority that I
11 can give res judicata effect in an action that was voluntarily
12 dismissed.

13 It may be that on the merits you have very good
14 defenses to Mr. Barel's claim. It's just that res judicata is
15 not one of them. You haven't established a basis for the Court
16 to grant res judicata effect to a summary judgment order when
17 the plaintiff voluntarily dismissed the case.

18 MR. WISHNEW: Understood, Your Honor.

19 THE COURT: You may have a claim over against
20 Greentree. I don't know. And you may have valid defenses to
21 Mr. Barel's claim, but it isn't going to be because of res
22 judicata.

23 MR. WISHNEW: Understood, Your Honor.

24 THE COURT: All right. That's why I stopped you, Mr.
25 Barel.

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1 MR. BAREL: Thank you, Judge.

2 THE COURT: You have to know when to stop before you
3 snatch defeat out of the jaws of victory.

4 MR. BAREL: I got you on that point. Thank you.

5 THE COURT: Okay. All right. Let's go on to the
6 next.

7 MR. WISHNEW: Thank you, Your Honor. The next claim
8 is the claim of Mr. Poole, claim 4128, a secured claim in the
9 amount of 220,922 dollars. I believe Mr. Poole is on the
10 phone.

11 THE COURT: All right. Mr. Poole, are you on the
12 phone?

13 MR. POOLE: Yes, I'm here. Yes. Your Honor. I'm
14 here.

15 THE COURT: Okay. I'll let Mr. Wishnew argue, and
16 then I'll give you a chance. Okay?

17 MR. POOLE: Thank you.

18 THE COURT: Go ahead, Mr. Wishnew.

19 MR. WISHNEW: Thank you, Your Honor. Your Honor, the
20 two points we want to raise in terms of the debtors' lack of
21 liability here is that the loan was -- the actions taken in
22 pursuing a foreclosure were appropriate. As set forth in the
23 objection as well as the reply and supplemental declaration,
24 the assignment and endorsement chain is complete and valid.
25 And GMAC Mortgage was empowered, as servicer, to pursue the

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1 foreclosure at the time when the loan was in default.

2 With regards to the belief by Mr. Poole that the
3 response by the debtors to his qualified written request was
4 improper, as we set forth both in the objection as well as in
5 the reply, we believe that our response was sufficient under
6 RESPA to provide him with the information necessary to answer
7 his questions.

8 We provided Mr. Poole with information to show the
9 history of the debits and credits on the account, late fees
10 that were assessed, suspension of the account, property
11 inspections and fees that were assessed, and the status of the
12 insurance policy on the account. We did not provide
13 information regarding the loan accounting and servicing systems
14 and assignments, because such information represented business
15 and trade practices that were proprietary. Moreover, the
16 information requested relating to the assignment of the loan
17 was not provided, because it did not relate to the servicing of
18 the loan.

19 In addition, TILA does not allow for rescission if the
20 information is not provided pursuant to a QWR. TILA allows for
21 a rescission up to three years after origination if disclosures
22 during origination are not provided. However, here the
23 disclosures were provided and more than three years passed
24 since the origination.

25 So for these reasons, Your Honor, we would ask that

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1 our objection to this claim be granted, and the claim be
2 expunged.

3 THE COURT: All right. Mr. Poole? ?

4 MR. POOLE: Yes? I really have, I guess, one big
5 thing that I was requesting in my qualified written request,
6 which was an actual unaltered wet ink note to prove the debt
7 that they say that I owed. Requesting that, I had set aside
8 funds, through a servicing agent or through an escrow agent,
9 and with proof of that I was willing to pay what they said that
10 I owed. They never showed proof. They never gave me the
11 original note. The note was never provided.

12 If they actually had the real original wet ink
13 unaltered note I would have paid what they asked. With all the
14 different proof of fraud and different things on contracts, I
15 don't think that's beyond my, you know, request to see that, if
16 they actually have that, as proof of my debt.

17 Never seeing that, I don't believe that they ever had
18 standing to start foreclosure procedure, which leads to fraud
19 on the court. I demanded to see the original. I've given them
20 multiple opportunities outside of court, to save the Court's
21 time, to produce the original. And they never have.

22 And, basically, the whole argument that I have with it
23 is that there is some responsibility for producing that note.

24 THE COURT: All right. Anything else you wish to add?

25 MR. POOLE: That's -- no. That's about it.

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1 THE COURT: Okay. Mr. Wishnew?

2 MR. WISHNEW: We provided -- in response to his
3 October QWR, we did provide him with a copy of the note and the
4 deed of trust and the subsequent modifications of the loan; his
5 payment history; a copy of the HUD-1 statement; all of which is
6 signed by Mr. Poole. That detail is set forth in paragraph 104
7 of our reply.

8 THE COURT: You want to respond to that, Mr. Poole?

9 MR. POOLE: Yes. The argument I have with that:
10 regardless of whether -- I asked for the original, not a copy.
11 I believe I'm within my right to ask for the original if I'm
12 willing to pay off the debt. They never provided that. A
13 copy -- I can't guarantee that that's my signature on it, and I
14 don't believe --

15 THE COURT: Mr. Poole --

16 MR. POOLE: -- Mr. Wishnew could either.

17 THE COURT: Mr. Poole, do you agree that, in response
18 to your qualified written request, they provided you with a
19 copy of your note and other documents?

20 MR. POOLE: There is a copy of my note, yes, but it's
21 now -- as I requested, I'm not -- it's not a certified copy;
22 it's just a copy printed off a computer. I can't say for sure
23 that that's the original, and I deny the fact that it's my
24 signature. It could be fraud -- could be fraudulent.

25 THE COURT: All right, I'm going to take the matter

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1 under submission.

2 Thank you very much, Mr. Poole.

3 MR. POOLE: Thank you.

4 MR. WISHNEW: Thank you, Your Honor. Your Honor, next
5 claim is the claim of Mr. Demetriou, claim 5653, a general
6 unsecured claim in the amount of 1.1 million dollars. I
7 believe Mr. Demetriou is in court today.

8 THE COURT: All right. Why don't you come on and have
9 a seat, Mr. Demetriou. After Mr. Wishnew's argued, I'll give
10 you --

11 MR. DEMETRIOU: Good morning, Your Honor.

12 THE COURT: -- a chance.

13 MR. DEMETRIOU: Thank you very much.

14 THE COURT: Okay?

15 All right, go ahead.

16 MR. WISHNEW: Your Honor, thank you. Really, what the
17 objection comes down to is a matter of judicial estoppel, Your
18 Honor. The claim was clearly filed by Mr. Demetriou in 2012.
19 He then pursued a Chapter 7 personal bankruptcy petition in
20 2014. As set forth on the schedules which we provided to the
21 Court, there is no identification of this claim on his
22 schedules. And so it is not Mr. Demetriou who can bring this
23 claim; it is rather his trustee who can bring the claim.

24 THE COURT: Where is the bankruptcy? Is it still
25 ongoing?

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1 MR. WISHNEW: I know he received a discharge. I'm not
2 sure if the matter's still open.

3 THE COURT: Which court?

4 MR. WISHNEW: I believe, Your Honor --

5 MR. DEMETRIOU: The Middle District of Florida, Your
6 Honor.

7 THE COURT: Okay.

8 MR. WISHNEW: Thank you.

9 So at this time, Your Honor, it is the Borrower's
10 Trust's position that the claim is not a claim that Mr.
11 Demetriou can bring, as it belongs to his bankruptcy estate.
12 It was never disclosed to his bankruptcy estate. And contrary
13 to -- even though he has -- well, it was an accident; he didn't
14 have the intent. The fact of the matter is, he filed a 1.1-
15 million-dollar claim that will yield -- that, if allowed, would
16 yield significant value to him. It was not disclosed and,
17 frankly, it was to be deemed valid, would certainly provide
18 significant benefit to his creditors. So, based on the
19 doctrine of judicial estoppel that this Court has recognized in
20 its other matters, we'd ask that the claim be disallowed.

21 THE COURT: Mr. Demetriou, is your Chapter 7
22 bankruptcy case still open or is it closed?

23 MR. DEMETRIOU: As far as I know, it's closed, Your
24 Honor. It's been fully discharged.

25 THE COURT: Why don't you come up to the microphone

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1 there, okay?

2 MR. DEMETRIOU: The discharge order was issued on June
3 20, 2014. And --

4 THE COURT: Give me that date again; I'm sorry.

5 MR. DEMETRIOU: June 20th, 2014. It was even --

6 THE COURT: That doesn't mean the case has been
7 closed.

8 MR. DEMETRIOU: Well, there's been some continued
9 negotiation with the trustee, with respect to releasing
10 interests in other real property that was part of --

11 THE COURT: With your Chapter 7 trustee?

12 MR. DEMETRIOU: Yes, and ongoing at this point, as far
13 as I'm concerned. Even if you want me to take this money and
14 hand it to the trustee, I don't have a problem with that. The
15 issue --

16 THE COURT: Well, I don't want you to do anything,
17 frankly. It's not up to me to decide that. But does -- the
18 problem that's created, when you -- you filed a claim here --

19 MR. DEMETRIOU: Yes.

20 THE COURT: -- and you subsequently commenced a
21 Chapter 7 bankruptcy.

22 MR. DEMETRIOU: Yes.

23 THE COURT: You're obligated to identify, in your
24 schedules in a Chapter 7, all property of the estate; so
25 anything -- claims, litigation claims, that arose prior to the

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1 filing of your petition. Once you do that, only the Chapter 7
2 trustee has the authority or the standing to prosecute the
3 claims. I don't know whether your case is open or closed.

4 MR. DEMETRIOU: If you'd like to -- if you --

5 THE COURT: Well, I don't want to do anything. I'm
6 just --

7 MR. DEMETRIOU: No, I'm suggesting, if the Court is
8 inclined -- is so inclined, let's adjourn this; I'll go back to
9 the trustee, let him make an appearance in here, and continue
10 with this. The issue of the judicial estoppel is not -- with
11 due respect to counsel, their approach to this is that because
12 it was not filed ipso facto, I don't have a claim. To the
13 contrary, the Supreme Court of this -- the Supreme Court of the
14 United States has said otherwise with respect to judicial
15 estoppel. First of all, there is no detriment or unfair
16 advantage that I'm getting with respect to this debtor, in
17 claiming --

18 THE COURT: Your problem --

19 MR. DEMETRIOU: -- in this claim here.

20 THE COURT: -- Mr. Demetriou, is you don't have
21 standing --

22 MR. DEMETRIOU: I --

23 THE COURT: -- to continue prosecuting --

24 MR. DEMETRIOU: -- respectfully --

25 THE COURT: -- a claim in this case. Once you have

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1 filed your bankruptcy in -- what judge -- who's the judge in
2 the Middle District of Florida?

3 MR. DEMETRIOU: Judge Glenn in Middle District of --

4 THE COURT: Paul Glenn?

5 MR. DEMETRIOU: Paul Glenn, yes.

6 THE COURT: Not related to me.

7 MR. DEMETRIOU: Not -- okay, I was wondering that when
8 I --

9 THE COURT: Very good judge. Been a judge a long
10 time.

11 MR. DEMETRIOU: I was wondering that when I came up
12 here.

13 THE COURT: Judge Glenn and I are unrelated.

14 MR. DEMETRIOU: Unrelated, okay. That --

15 THE COURT: We've inquired of each other about it, but
16 we're unrelated.

17 MR. DEMETRIOU: Your Honor, I think this is a valid
18 claim. Effect -- the Trust and the debtors have already
19 acknowledged -- in their reply, have acknowledged my claim,
20 that they have fraudulently obtained a --

21 THE COURT: Well, they have not --

22 MR. DEMETRIOU: -- foreclosure to --

23 THE COURT: -- acknowledged that they --

24 MR. DEMETRIOU: Well --

25 THE COURT: -- fraudulently obtained anything. But --

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1 MR. DEMETRIOU: They will not refute my opposition.
2 That's the way they said it. To me, that's an admission. And
3 respectfully, I think that what is accomplished is, even if
4 this money was to be granted in the claim, I still have the
5 issue --

6 THE COURT: Mr. Demetriou, you --

7 MR. DEMETRIOU: Yes, sir.

8 THE COURT: -- do not have the authority to prosecute
9 the claim in this court.

10 MR. DEMETRIOU: Then may I respectfully --

11 THE COURT: If the Chapter 7 trustee wants to do so,
12 he can. If he wants to abandon the claim to you, he can. It
13 may hinge on whether your case remains open --

14 MR. DEMETRIOU: May I then request --

15 THE COURT: -- or not.

16 MR. DEMETRIOU: -- respectfully request an adjournment
17 to find that out from the trustee and get that conclusion?

18 THE COURT: Well, I'm going to adjourn this matter for
19 a period of approximately thirty days. I'll have to find out
20 when the next ResCap omnibus hearing date is.

21 Mr. Wishnew, when is that?

22 MR. WISHNEW: Your Honor, there's a few between now
23 and the next thirty days.

24 THE COURT: Do we have a date in January? I mean --

25 MR. WISHNEW: I think January 5th, Your Honor, or

1 January 14th.

2 THE COURT: All right, January 6th at 10 a.m. So I'm
3 going to adjourn the matter until January 6th at 10 a.m. If
4 the matter remains in its status as it is today, the Court will
5 have no choice but to sustain the Trust's objection here. This
6 is a matter you need to take up with the Chapter 7 trustee in
7 Florida.

8 MR. DEMETRIOU: Okay.

9 THE COURT: And I'm not going to tell you what you
10 should or shouldn't do or what he or she should or shouldn't
11 do. But for now, the objection to Demetriou claim 5653 is
12 adjourned to 10 a.m. January 6th, 2015.

13 MR. DEMETRIOU: Thank you, sir.

14 MR. WISHNEW: Thank you, Your Honor.

15 THE COURT: Okay, Mr. Wishnew.

16 MR. WISHNEW: Thank you, Your Honor. That brings us,
17 Your Honor, to claim 5852 of Mr. McDougal. Your Honor, this is
18 a claim for approximately 1.65 million dollars. And
19 essentially, the allegations are that there was wrongful
20 foreclosure against him by the company and that we, the
21 debtors, failed to participate or assist him in a personal
22 lawsuit he brought against Marin County.

23 As set forth in the objection as well as in the reply,
24 there is a proper chain of title here that empowered GMAC
25 Mortgage as servicer to pursue the foreclosure initially, on

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1 behalf of Deutsche Bank.

2 With regards to the Marin County litigation, the
3 company was apprised of it and properly adjourned foreclosure
4 proceedings to allow the claimant to pursue his remedy against
5 Marin County. Ultimately when the matter was settled, the
6 foreclosure went forward because the loan was sufficiently in
7 arrears.

8 So for the reasons set forth both in the objection as
9 well as in the reply and Ms. Horst's supplemental declaration,
10 and declaration in support of the objection, we would ask that
11 this claim be expunged from the claims register.

12 THE COURT: All right, is anybody -- Mr. McDougal, are
13 you appearing? Or anyone appearing on behalf of McDougal?

14 All right, the Court'll take it under submission.

15 MR. WISHNEW: Thank you, Your Honor. Two more
16 matters. The next claim is claim 5970 of Mr. and Mrs.
17 McGuinty, and I believe Mr. McGuinty is on the phone today.

18 THE COURT: All right. Mr. McGuinty, are you on the
19 phone?

20 MR. MCGUINTY: Good morning, Your Honor.

21 THE COURT: Good morning. After Mr. Wishnew argues,
22 I'll give you a chance, okay?

23 MR. MCGUINTY: Thank you, Your Honor.

24 THE COURT: Okay. Go ahead, Mr. Wishnew.

25 MR. WISHNEW: Thank you, Your Honor. This is

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1 basically a claim in which the McGuintys assert that the
2 company did not grant them a loan modification to which they
3 believe they were entitled to. For the reasons set forth in
4 both the objection as well as the reply, the debtors outlined
5 the numerous loss mitigation efforts that were undertaken, the
6 calculations that were undertaken, when deciding whether to
7 approve a trial repayment plan.

8 And with regards to Mr. McGuinty's assertions about
9 the fact that we didn't consider any loan modification under
10 the Federal Disability Act, the fact of the matter is, the
11 arguments that the claimants have made are really irrelevant
12 and don't contradict or undermine in any way the efforts and
13 the calculations made by the debtors as part of their
14 longstanding loss mitigation efforts and attempts to work with
15 the claimants, for the reasons stated in the objection and in
16 the reply. The fact of the matter is, there just was not
17 sufficient income to grant the modification. And so,
18 ultimately and unfortunately, the property ultimately went to
19 foreclosure. And contrary to Mr. McGuinty's assertion, really
20 there was no profit made on the property.

21 So for the reasons set forth, we would ask that this
22 claim certainly be expunged.

23 THE COURT: All right, Mr. McGuinty, go ahead and
24 respond.

25 MR. MCGUINTY: Thank you, Your Honor. Before I begin,

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1 could I add two items that I think are important?

2 THE COURT: You can ask; I don't know -- I don't --

3 MR. MCGUINNY: Okay.

4 THE COURT: We'll see.

5 MR. MCGUINNY: As far as my physical handicap, in 1961
6 I reported to the United States Army at Fort Wayne, in Detroit,
7 Michigan, and they gave me a medical discharge because of my
8 heart, my polio and my forty-nine stitches in my left hand. So
9 my handicap problem goes all the way back to 1961. And on that
10 fact alone, I believe I should have received some help from
11 GMAC, the fact that I had been a faithful customer since 1971
12 when I worked for Chevrolet.

13 My other fact is, whenever I give the Court or any of
14 the attorneys any information, I always try to give them the
15 best that I can. I worked night and day to put my story
16 together. On Monday I received about five pounds of paper,
17 about 1,000 pages unbound, and I can't make heads or tail out
18 of it, because it's written -- instead of written in landscape,
19 it's written in the other format. It's impossible to read.
20 And I don't think that's fair.

21 THE COURT: All right, I will -- after you have
22 finished arguing, I'm going to ask Mr. Wishnew about what it is
23 that was provided on Monday to Mr. McGuinty. But go ahead,
24 Mr. McGuinty.

25 MR. MCGUINNY: Your Honor --

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1 THE COURT: I mean, Mr. McGuinty, let me just stop you
2 for a second. So I have read the pleadings and I know that on
3 April 9th, 2011 -- excuse me -- on December 17th, 2010 you had
4 filed your third application for a loan modification, and you
5 were approved for a HAMP trial plan, with payments due on April
6 1st, 2011 and May 1st, 2011. And at the end of the two-month
7 trial period, you were denied a permanent modification on April
8 6, 2011 because you had failed to make the first trial payment
9 on March 1st, 2011. Is that correct?

10 MR. MCGUINTY: And I'm glad you brought that up,
11 because this really hurt me. They took my home that I worked
12 twelve years on, I broke my thumb, I broke two ribs, I
13 dislocated my right shoulder. I was not --

14 I was protecting your property. I was like a
15 caretaker. And I faithfully paid you people since 1971. I
16 gave you thirteen payments every year. I gave you all my GMAC
17 rewards. I didn't blow any of it. Okay? I didn't give (sic)
18 any of it. You stole my house that I worked for; you gave it
19 to somebody for five percent down and a three-percent interest.
20 Okay? That's what you gave a stranger. To a guy that had
21 given GMAC for thirty-five years -- you gave me a deal -- I was
22 paying 1,596.08. And you know what you guys gave me? 1,490
23 dollars; a big 106-dollar deduction.

24 After -- after -- after working for General Motors,
25 you take all my medical benefits, you take my life insurance,

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1 but you don't want -- you don't really take it from me; you
2 take it from my deaf daughter's grandkids; because in 2006 I
3 set up -- I set up trusts that all this money went to these
4 grandkids. You took the money away from my grandkids and my
5 deaf daughter. I really hope you're happy.

6 THE COURT: Mr. McGuinty, I know you're upset, and --

7 MR. MCGUINTY: No, I'm not upset.

8 THE COURT: Well, then please try and answer my
9 question. I know --

10 MR. MCGUINTY: Yes, sir.

11 THE COURT: -- you had a series of applications for
12 loan modifications. Your first application for a modification
13 was denied. Your second application for a loan modification
14 was denied. And then you filed a third application for a loan
15 modification and you were approved for a trial -- a HAMP trial
16 plan with payments due on April 1st, 2011 and May 1st, 2011.
17 After your -- on April -- well, on April 6, 2011 the
18 modification was denied because you hadn't made the payments.
19 Do you agree that you were approved for a modification and
20 didn't make the payments? I'd like -- I really would like an
21 answer to that question.

22 MR. MCGUINTY: Yes.

23 THE COURT: Okay. All right, I'm going to take the
24 matter under submission. There's quite a bit --

25 Well, no, before doing that; what is it -- I am

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1 concerned, Mr. Wishnew. What is it that was served on
2 Mr. McGuinty this week?

3 MR. WISHNEW: So what was served on Mr. McGuinty as
4 well as the other seven respondents that are being addressed
5 today, is essentially a full copy of the reply, including the
6 exhibits.

7 THE COURT: How much of it related to Mr. McGuinty?
8 Because there is a lot --

9 MR. WISHNEW: It --

10 THE COURT: There are quite a few -- I'm always
11 concerned -- and I've expressed this before -- if any new
12 arguments are raised in reply.

13 MR. WISHNEW: Understood, Your Honor. Yes.

14 THE COURT: So with respect to Mr. McGuinty, what is
15 it that was provided in the reply?

16 MR. WISHNEW: I mean, with regards to the reply, you
17 would have the factual background section -- just give me one
18 moment, Your Honor -- the factual background section on pages
19 18, 19, and carrying over to page 20. Referenced in that
20 factual background are less than a handful of additional -- of
21 exhibits substantiating the facts set forth in the original
22 objection. And then in regards to the legal arguments or
23 responding to the meritorious arguments put forth by
24 Mr. McGuinty, pages 41 and 42 of the reply also address his
25 arguments.

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1 So you have essentially five pages of the reply,
2 certain excerpts from Ms. Horst's supplemental declaration, and
3 any additional exhibits that substantiate the underlying facts.

4 THE COURT: All right, Mr. McGuinty, what I'm going to
5 do is the following: I'm going to give you --

6 MR. MCGUINTY: Your Honor, can --

7 THE COURT: No.

8 MR. MCGUINTY: -- can I add --

9 THE COURT: No. Could you just --

10 MR. MCGUINTY: -- one more thing, please?

11 THE COURT: -- stop for a second, Mr. McGuinty? I'm
12 going to tell you what we're going to do. I'm going to give
13 you until 5 p.m. on November 20th, one week from today, to file
14 any supplemental papers addressed solely -- I want to make this
15 clear -- addressed solely to any evidence or arguments
16 submitted by the Trust in its reply. While the entire reply
17 was very lengthy because of the number of objections and other
18 claimants that were covered by it, the portion of it that
19 actually relates to you is fairly limited.

20 So I'm going to give you a week to file any additional
21 response you want, limited solely to the information contained
22 in the reply that the Trust served on you. I will not have any
23 further argument unless I order it. After receiving any
24 additional -- and make sure you serve the Trust. After
25 receiving anything else that Mr. McGuinty files, I'll either

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1 decide the matter based on the papers at that point or, if the
2 Court concludes that a further hearing is required, I will give
3 everybody notice of it. That's how we're going to proceed.

4 Thank you very much, Mr. McGuinty.

5 MR. MCGUINTY: But, Your Honor, can I add just one
6 thing, please?

7 THE COURT: Go ahead.

8 MR. MCGUINTY: On page 64 of 423, I have the document
9 that Morrison & Foerster is talking about. They wanted me to
10 send them a check for \$3,539.71.

11 THE COURT: Okay --

12 MR. MCGUINTY: And that's page 64 of 423.

13 THE COURT: Mr. McGuinty, I'm giving you one week from
14 today to file any additional papers in response to what was
15 included. And in the papers that they submitted, only Exhibits
16 II through LL apply to your claim -- to the objection to your
17 claim. So those are the only exhibits, II through LL, as to
18 which you can respond. It's a limited amount of material, but
19 I want to give you an opportunity to respond.

20 But any response -- I don't want a rehash of arguments
21 that have already been made by either side. If there's
22 anything in those additional materials that the Trust has
23 served on you, I'm giving you a chance, a week, to go ahead and
24 file an additional response; and then after receiving that,
25 I'll determine whether to decide it without a further hearing

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1 or decide it on the basis of the papers.

2 All right. Next matter.

3 MR. WISHNEW: Okay. One point, Your Honor, that
4 I'll -- to try and address the Court's concern and
5 Mr. McGuinty's concern. Going forward, we will make a better
6 effort to only serve the documents related to that individual's
7 claim, on them, as opposed to serving something more voluminous
8 that deals with multiple claimants --

9 THE COURT: Okay.

10 MR. WISHNEW: -- and avoids confusion.

11 THE COURT: That's fine. All right.

12 MR. WISHNEW: Thank you. Your Honor, the last claim
13 being addressed today is the claim filed by Simon Woody, aka
14 Royal Kingdom, claim 3702, a secured claim for \$1,219,292.64.
15 Your Honor, this is a claim where, frankly, there is no
16 discernible basis for liability voiced against the debtors.
17 And despite efforts to try and diligence this claim, have
18 Mr. Woody substantiate the claim, there really is no
19 recognizable basis for liability by the company.

20 THE COURT: All right, let me -- before you --

21 Is anybody appearing on the telephone or in the
22 courtroom, for Royal Kingdom Builders?

23 All right, go ahead, Mr. Wishnew.

24 MR. WISHNEW: Thank you, Your Honor. Homecomings only
25 serviced this loan for just over a year: between January 2007,

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1 April 2008. There's an absence of any colorable allegations
2 against any debtor entity, on account of any wrongdoing that
3 would provide for any liability. And for the reasons set forth
4 in the objection and the reply, we'd ask that this claim be
5 expunged.

6 THE COURT: All right, with respect to claim 3702 of
7 Royal Kingdom Builders, there's a claim in the amount of
8 \$1,219,219.64 (sic) against ResCap for mortgage servicing
9 performed by Homecomings Financial on property located at 205
10 Jamerson Farm Road, Collierville, Tennessee 38017. The Trust
11 objected to the claim on the basis of insufficient
12 documentation. According to the Trust, the claimant only
13 asserts "services rendered" as the basis for the claim on the
14 claim form. The Trust also notes that the claimant attached
15 the UCC financing statement to the proof of claim, that
16 indicates that Simon and Yvette Woody are both the debtors and
17 secured party in connection with a 500-million-dollar lien
18 against certain collateral. The proof of claim also attaches a
19 Truth in Lending document dated November 22, 2006, showing a
20 proposed financing from First Magnus Financial Corp., secured
21 by the property.

22 Despite the Trust's request for additional information
23 from the claimant, no other documentation was provided. The
24 Trust searched its books and records with regard to loans tied
25 to the claimants and the property and uncovered no

1 documentation that would evidence any liability on the part of
2 the debtors. This is all set forth in the objection to the
3 claim.

4 Royal Kingdom filed an opposition apparently asserting
5 that First Magnus Bank went out of business as of May 2008, so
6 it could not have serviced the loan past that date. The
7 opposition then continues by stating that Royal Kingdom
8 Builders, care of Simon M. Woody, Jr., asked Claimant to
9 provide proof of documentation it was never provided;
10 therefore, never provided proof that they were servicer or even
11 having any documentation to this loan.

12 It's unclear, from the allegations, what Royal Kingdom
13 is alleging; but it appears they are asserting either that the
14 debtors never proved that they were the servicer of the loan or
15 had involvement in it, after Royal Kingdom requested
16 documentation, and thus, Royal Kingdom could not provide any
17 documentation, or that the debtors asked Royal Kingdom for
18 documentation, Royal Kingdom could not give the documentation
19 because the debtors never gave them any documentation for this
20 loan before. In reply, the Trust asserts that Royal Kingdom
21 failed to provide any additional information to support its
22 claim.

23 The Trust's objection to the Royal Kingdom claim
24 number 5970 is sustained and the claim is expunged. Claimant
25 provided no information for any basis whatsoever, and the Trust

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1 has established that its books and records show none, so that
2 claim is expunged.

3 MR. WISHNEW: Thank you very much, Your Honor. We
4 will submit an order consistent with Your Honor's rulings,
5 electronically to chambers.

6 THE COURT: Yeah. So what I would like is separate
7 orders with respect to the ones I've ruled on today.

8 MR. WISHNEW: Right.

9 THE COURT: Okay. And I will in all likelihood enter
10 separate orders for each of those contested claims that we
11 dealt with today. Obviously, as to McGuinty I have to wait to
12 receive whatever additional information Mr. McGuinty wishes to
13 provide.

14 MR. WISHNEW: I could also provide -- in the order
15 that we're putting together, I can provide for the adjournment
16 of Mr. Demetriou's claim as well.

17 THE COURT: That's fine.

18 MR. WISHNEW: Okay.

19 THE COURT: Okay?

20 MR. WISHNEW: Very good.

21 THE COURT: All right, thank you very much.

22 MR. WISHNEW: Thank you, Your Honor.

23 THE COURT: We're going to take a recess until 11:30
24 and then we'll continue on with the docket. Okay, so we're --
25 Conversion Consulting, and then 37 West 24th Street and 983

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1 Fulton LLC remain to be dealt with. We'll resume at 11:30.

2 Thank you.

3 (Whereupon these proceedings were concluded at 12:05 PM)

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2 I N D E X

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4 RULINGS

	PAGE	LINE
6 ResCap Borrower Claims Trust's Objection to	7	9
7 claim number 4664 of James C. Jackson is		
8 sustained		
9 Objections to claims in the seventy-fifth	9	1
10 omnibus objection that remain uncontested		
11 are sustained and the claims are expunged		
12 Objection to Mr. Barel's claim number 4118	28	4
13 on grounds of res judicata is overruled		
14 The Trust's objection to the Royal Kingdom	50	24
15 claim number 5970 is sustained and the claim		
16 is expunged.		

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2 C E R T I F I C A T I O N

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4 I, Hana Copperman, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

Hana Copperman

8

9

10 HANA COPPERMAN

11 AAERT Certified Electronic Transcriber CET**D 487

12

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17 Date: November 14, 2014

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